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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 2003P01010WOUS						
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Application Number 10/581,531	Filed 02/16/2007							
First Named Inventor Martin Stickel								
Art Unit 3742	Examiner Thor S. Campbell							
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>								
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input type="checkbox"/> attorney or agent of record. Registration number _____ <input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>62,246</u>	<div style="text-align: right;"> <u>/Andre Pallapies/</u> _____ Signature Andre Pallapies _____ Typed or printed name 252-672-7927 _____ Telephone number September 16, 2010 _____ Date </div>							
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.								
<input type="checkbox"/> *Total of _____ forms are submitted.								

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**STATEMENT OF ARGUMENTS
FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Dear Sir:

Applicants submit this Statement of Arguments in support of its Pre-Appeal Brief Request for Review and Notice of Appeal filed herewith.

Overview

Claims 22-52 are pending in this application.

In the Office Action dated June 25, 2010, claim 46 was rejected under 35 U.S.C. §112, first paragraph; claims 22, 32 and 39 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 941,215 to Wade (“Wade”); claims 23-28, 30, 31, 40, 42 and 43 were rejected under 35 U.S.C. §103(a) over Wade in view of U.S. Patent Application Publication No. US 2004/0074893 to Wermbter et al. (“Wermbter”); claims 34-38 were allowed; and claims 29 and 47 were objected to. These rejections should be withdrawn for at least the following reasons.

A. General Comments

Applicant submits that the previous Office Action (dated December 30, 2009) was not in compliance with 37 CFR 1.104(c)(2) for at least the reason that the previous Office Action merely copies the claim language and inserts a few reference numbers. It essentially provides no explanation regarding the application of the applied references to the claim features. (Amendment B, page 15). Further, the previous Office Action did not address the proper claim language. Amendments made in Amendment A dated September 15, 2009, were not addressed.

The Office Action repeats the same deficient format as the previous Office Action and is similarly not in compliance with 37 CFR 1.104(c)(2). In addition, the Office Action does not address the proper claim language. Amendments made in Amendment B dated March 29, 2010, are not addressed.

Further, the Office Action does not address claim 41 other than to say on the Office

Action Summary that it is objected to.

In telephone messages from Examiner Campbell subsequent to the Office Action, Examiner Campbell indicated that claims 41, 48 and 50-52 are objected to, and claim 49 is allowable. It is unclear to Applicant why claim 41 is objected to as no explanation has been provided. As a result, Applicant believes that the current state of the claims is as follows: Claims 34-38 and 49 are allowed; claims 29, 47, 48 and 50-52 are objected to as dependent on a rejected claim; claim 41 is objected to for an unknown reason; and claims 22-28, 30-33, 39, 40 and 42-46 are rejected.

Applicant requests that all claims be allowed or at least a properly prepared Office Action be issued.

B. Claim 46

The Office Action rejects claim 46 under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. This rejection is repeated verbatim from the previous Office Action. Applicant traversed the rejection in Amendment B. However, in the interest of expediting prosecution, the specification was amended by Amendment B to obviate the rejection. (Amendment B, page 13). The Office Action provides no further explanation and it does not address the amendments made and the explanation provided in Amendment B.

C. Claims 22, 32 and 39

The Office Action rejected claims 22, 32 and 39 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 941,215 to Wade. Applicant respectfully traverses the rejection. The claims language presented in the Office Action is incorrect for claims 32 and 39.

Regarding claim 22, the Office Action alleges that Wade discloses a heating device for fluids, the heating device being adapted for mounting thereof in a continuous flow heater. Applicants respectfully submit that Wade discloses a heater itself, and not a heating

device being adapted for mounting in a heater. (Amendment B, page 16).

Regarding claims 32 and 39, the Office Action alleges that Wade discloses a molded part connected positively to the heating device in a pressure-resistant and thermally stable manner to form a fluid chamber, the molded part having at least one inlet and at least one outlet. Applicant understands from the February 26 interview that the Examiner is asserting that (a) casing 10 and closure member 22 together correspond to the claimed molded part; (b) resistance 12 corresponds to the claimed heating element; and (c) insulating material 13, 16 and/or 17 correspond to the claimed heat exchanging element.

Applicant initially submits that closure member 22 and casing 10 together cannot be the claimed molded part because they are not one part, they are two separate parts. Second, insulating material 13, 16 and 17 is not in direct contact with the fluid, as required by claims 32 and 39. (Amendment B, page 16).

D. Claims 23-28, 30, 31, 40, 42 and 43

The Office Action rejected claims 23-28, 30, 31, 40, 42 and 43 under 35 U.S.C. 103(a) over Wade in view of U.S. Patent Application Publication No. US 2004/0074893 to Wermbter et al. Applicant respectfully traverses the rejection. Applicant believes that this rejection now applies to claims 23-28, 30, 31, 33, 40 and 42-45, but is not confident that this is the case.

The claims language presented in the Office Action is incorrect for claims 23, 27 and 42-45.

Regarding claims 23 and 27, neither of the applied references teaches or suggests heating sections that cover the entire central area except for a mounting area for mounting a temperature monitoring device. Regarding claim 26, neither of the applied references teaches or suggests a temperature monitoring device disposed on the heat exchanging element that is in good heat-conducting connection with the heat exchanging element. Regarding claim 27, neither of the applied references teaches or suggests a temperature monitoring element disposed in a mounting area adjacent to the heating element.

Regarding claim 28 neither of the applied references teaches or suggests a temperature monitoring element that is formed by an NTC resistance. The Office Action appears to apply a U.S. Patent Application Publication (Schilling, US 2002/0011480) as teaching that ptc and ntc temperature sensors are known. It is unclear, without further explanation by the examiner: 1) where, if at all, Schilling discloses such sensors, and 2) even if Schilling does disclose such sensors, why it would have been obvious to provide a temperature monitoring element that is formed by an NTC resistance and to provide it on the heat exchanging element as opposed to some other location.

Regarding claim 40, neither of the applied references teaches or suggests a sealing ring.

Regarding claim 42, the Office Action alleges that Wade discloses a molded part connected positively to the heating device in a pressure-resistant and thermally stable manner to form a fluid chamber, the molded part having at least one inlet and at least one outlet. Applicant understands from the February 26 interview that the Examiner is asserting that (a) casing 10 and closure member 22 together correspond to the claimed molded part; (b) resistance 12 corresponds to the claimed heating element; and (c) insulating material 13, 16 and/or 17 correspond to the claimed heat exchanging element. Applicant initially submits that closure member 22 and casing 10 together cannot be the claimed molded part because they are not one part, they are two separate parts. Second, insulating material 13, 16 and 17 is not in direct contact with the fluid, as required by claim 42. Having both an inlet and an outlet on the molded part enables the heating device to be a separate unit that can be removed without removing any pipes or hoses.

CONCLUSION

In view of the above, Applicants respectfully request allowance of claims 22-33, 39-48 and 50-52.